

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ELROY W. BROWNING,

Plaintiff,

v.

JEANNE WOODFORD, et al.,

Defendants.

CASE NO. 1:05-CV-00342-AWI-LJO-P

ORDER DENYING PLAINTIFF'S MOTION
TO COMPEL A RESPONSE TO HIS
REQUEST FOR PRODUCTION OF
DOCUMENTS AS MOOT

(Doc. 41)

ORDER REQUIRING PLAINTIFF TO FILE A
DECLARATION ATTESTING TO THE
EXPENSES HE INCURRED IN FILING THE
MOTION TO COMPEL, AND ALLOWING
DEFENDANT THIRTY DAYS FROM DATE
OF SERVICE OF PLAINTIFF'S
DECLARATION WITHIN WHICH TO BE
HEARD ON PLAINTIFF'S MOTION FOR
REASONABLE EXPENSES

(Doc. 41)

Plaintiff Elroy W. Browning ("plaintiff") is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. On April 19, 2006, plaintiff filed a motion to compel defendant Lopez ("defendant") to respond to his request for the production of documents and for the payment of reasonable expenses in the amount of \$16.35. (Doc. 41.) Defendant filed a statement of non-opposition to plaintiff's motion to compel on May 1, 2006, and plaintiff filed a reply on May 12, 2006. (Docs. 47, 49.)

1 Plaintiff served a request for the production of documents on January 7, 2006.¹ Defendant's
2 response was due on or before February 24, 2006. Fed. R. Civ. P. 6(c); Disc. Order, ¶2. Plaintiff
3 attempted to resolve the discovery dispute, in compliance with the court's discovery order, by
4 sending defendant's counsel a letter. (Attach. B.) For reasons not clear to the court, defendant's
5 counsel treated the letter as a discovery request rather than an attempt to prompt a response to a
6 previously served discovery request. (Attach. C.) Plaintiff subsequently filed a motion to compel.

7 In his statement of non-opposition, defendant states that his response was inadvertently not
8 served and upon receipt of the motion to compel, the response was immediately served on April 24,
9 2006. Defendant contends that plaintiff's motion to compel is moot. In his reply, plaintiff argues
10 that his motion is not moot.

11 Plaintiff's motion to compel a response to his request for the production of documents has
12 been rendered moot by service of a response on April 24, 2006. Accordingly, plaintiff's motion to
13 compel shall be denied as moot. Plaintiff's motion to reasonable expenses is not moot, however.

14 Pursuant to Federal Rule of Civil Procedure 37(d)(A), if the discovery requested is provided
15 after the motion to compel is filed, the court may order that reasonable expenses incurred in making
16 the motion to compel be paid to the moving party. In this instance, defendant served his response
17 to plaintiff's request for the production of documents upon receipt of plaintiff's motion to compel.

18 The basis for plaintiff's request for \$16.35 is not clear from his motion. Within thirty days,
19 plaintiff shall file a declaration setting forth the expenses he incurred in filing the motion to compel.
20 Plaintiff states in his reply that he is seeking "reasonable expenses in obtaining the order and pay the
21 fee of the court expenses." (Doc. 41, 2:7-9.) Plaintiff did not pay a filing fee for the motion or incur
22 any other expense payable to the court. Plaintiff may seek to obtain only reasonable expenses he
23 actually incurred in making the motion to compel. Defendant shall have thirty days from the date
24 of service of plaintiff's declaration within which to respond to plaintiff's motion for reasonable
25 expenses.

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28 ¹ Although plaintiff contends in his motion that the request was served on January 4, 2006, the proof of
service attached to the request states that it was served on January 7, 2006. (Attach. A, p. 3.)

Accordingly, it is HEREBY ORDERED that:

1. Plaintiff's motion to compel a response to his request for the production of documents, filed April 19, 2006, is DENIED on the ground that it is moot;
2. Within **thirty (30) days** from the date of service of this order, plaintiff shall file a declaration setting forth the reasonable expenses he incurred in preparing and filing the motion to compel; and
3. Defendant has **thirty (30) days** from the date of service of plaintiff's declaration within which to respond to plaintiff's motion for reasonable expenses.

IT IS SO ORDERED.

Dated: May 30, 2006
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/s/ Lawrence J. O'Neill
UNITED STATES MAGISTRATE JUDGE